

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF RHODE ISLAND
3

4 * * * * * C.R. NO. 13-135M
5 UNITED STATES OF AMERICA *
6 VS. *
7 JOHN J. FALL * APRIL 28, 2015
8 * 10:00 A.M.
9 * * * * * PROVIDENCE, RI

10 BEFORE THE HONORABLE JOHN J. McCONNELL, JR.,
11 DISTRICT JUDGE
12

13 (Sentencing)

14 APPEARANCES:

15 FOR THE GOVERNMENT: JOHN N. KANE, ESQ.
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25

1 28 APRIL 2015 -- 10:00 A.M.

2 THE COURT: Good morning, everyone. We're here
3 this morning for sentencing in the case of the United
4 States versus John J. Fall, Criminal Action Number
5 13-135.

6 Would counsel identify themselves for the
7 record, please.

8 MR. KANE: Good morning, your Honor. John Kane
9 for the United States. With me at counsels' table is
10 Mr. Bender, Jeff Bender, with the Department of Justice
11 for the Government as well.

12 THE COURT: Good morning. Welcome back, folks.

13 MR. KANE: Thank you.

14 MR. BENDER: Good morning.

15 MR. FITZGERALD: Kevin Fitzgerald for Mr. Fall.

16 THE COURT: Good morning, Mr. Fitzgerald.

17 MR. FITZGERALD: Good morning, your Honor.

18 THE COURT: I have received a copy of the -- let
19 the record reflect that the Defendant is in the
20 courtroom.

21 I've received a copy of the presentence report,
22 the Government's sentencing memorandum, an objection to
23 the presentence report, which we'll deal with in due
24 order, and various filings by the Defendant that are on
25 the docket.

1 The presentence report calculates the advisory
2 sentencing guidelines as follows. Mr. Fitzgerald, I
3 will hear your objections as we go through it. For the
4 three counts -- is it three counts?

5 THE DEFENDANT: Sir, for the record, I require
6 to augment my allocution already on the record. That's
7 my right.

8 THE COURT: For the four -- Mr. Fall, if you
9 wish to be heard, you need to sit at defense table by a
10 microphone.

11 THE DEFENDANT: As you know, sir, I'm neither
12 the Defendant nor the accuser.

13 THE COURT: The four counts that Mr. Fall was
14 found guilty of carry with it a base offense level of
15 18. The tax loss has been calculated to be between 200
16 and 400 thousand dollars, which is why the base offense
17 level of 18 applies.

18 In addition, the Probation Department has added
19 two points under Sentencing Guideline 2T1.1(b)(2)
20 because the Defendant used multiple methods in an
21 attempt to conceal his criminal activity by setting up
22 multiple business entities and bank accounts across the
23 country and by using false names. That carries with it
24 a two-point addition.

25 In addition, the Probation Department has

1 calculated an adjustment for obstruction of justice.
2 Their recommendation is that the Defendant willfully
3 obstructed or impeded or attempted to obstruct or
4 impede the administration of justice with respect to
5 the investigation, prosecution or sentencing in the
6 instant offense and that the obstructive conduct
7 related to the Defendant's offense of conviction and
8 any other relevant conduct or a closely-related
9 offense; and, therefore, two points were added.

10 The Defendant, through its objection to the
11 presentence report, objects to that two-point
12 enhancement, which I'll hear in one second.

13 The adjusted offense level comes to 22.
14 Mr. Fall has no criminal history points and, therefore,
15 is a Category I. So for an offense level of 22 with a
16 criminal history of I, the recommended period of
17 incarceration is 41 to 51 months.

18 Mr. Kane, any objection to the presentence
19 report or the calculation of the guideline range by the
20 Government?

21 MR. KANE: No objection from the Government.

22 THE COURT: Mr. Fitzgerald, you have filed an
23 objection concerning the offense conduct that was
24 listed as well as the two-point enhancement for
25 obstruction of justice. I'll hear you on that.

1 MR. FITZGERALD: Your Honor, the -- would you
2 like me to go to the middle?

3 THE COURT: I think it's better for the
4 stenographer if you would.

5 THE DEFENDANT: Sir, for the record, I require
6 to augment my allocution already on the record. I'm
7 here by special visitation under threat --

8 (Defendant confers with counsel.)

9 THE COURT: Mr. Fitzgerald.

10 MR. FITZGERALD: Your Honor, getting to the
11 obstruction of justice enhancement, I'd like the Court
12 to keep in mind the timing of my objection filing and
13 then when the sentencing memorandum came from the
14 Government, okay, because it came afterwards, your
15 Honor.

16 The presentence report says that the obstruction
17 of justice enhancement is applied per the offense
18 conduct, which just comes from the Government. All
19 right. It's not the Government's decision. It's the
20 Court's decision whether there's been obstruction of
21 justice or not.

22 So when probation puts in there that per the
23 Government Mr. Fall committed perjury and, therefore,
24 two points are applied, we've got the cart before the
25 horse.

1 THE COURT: Well, let me do this. Let me ask
2 you to -- do you want to be heard on the offense
3 conduct section that's in the presentence report?
4 Let's put aside the obstruction of justice.

5 MR. FITZGERALD: Yes.

6 THE COURT: Why don't you be heard on that.

7 MR. FITZGERALD: Your Honor, there is no --

8 THE COURT: Why don't I let you be heard on
9 that.

10 MR. FITZGERALD: Thank you. There's no rule,
11 there's no regulation that says there is an offense
12 conduct section in the PSR. It's something we do,
13 generally do. I think the intent is that it helps the
14 Court understand the whole case and it helps the Court
15 figure out what the sentence ought to be.

16 Now, if you combine that with the fact that the
17 vast overwhelming majority of cases are pleas and
18 everybody pleas to an agreed-upon set of facts, the
19 offense conduct section is usually not an issue. Most
20 of the time everybody agrees what the ingredients are,
21 what the facts are in the offense conduct.

22 When we have a trial, it changes, okay, because
23 at a trial we do have a decision that's made at the end
24 of the trial, and it's whether somebody is guilty or
25 not guilty of the charges, and the jury makes that

1 decision. And after trial, that's the only fact that's
2 decided, that is, the offense conduct, did somebody
3 commit that crime or did they not. That's it. Okay.
4 Everything else is not agreed upon by the parties.
5 Okay.

6 So in this instance, the Government put a whole
7 lot of -- well, they put their theory, what they
8 believe the facts of the case are in there. The
9 objection is, that's not the place for it.

10 And after I filed that, we got the sentencing
11 memorandum from the Government last week, and all those
12 same facts are in the sentencing memorandum, and that's
13 the place it should be. That's the appropriate place.

14 THE COURT: Let me hear from Mr. Kane on just
15 that issue.

16 MR. FITZGERALD: One other thing, your Honor?

17 THE COURT: Sure. Of course.

18 MR. FITZGERALD: When those facts are included
19 in the PSR --

20 THE COURT: It has repercussions.

21 MR. FITZGERALD: -- it has repercussions, and it
22 follows the Defendant around.

23 THE COURT: I understand.

24 MR. FITZGERALD: Thank you, your Honor.

25 THE COURT: Mr. Kane.

1 MR. KANE: Your Honor, I think it's standard
2 practice not only in this district but other districts,
3 the Probation Department does an investigation,
4 presentence investigation, and they seek the views of
5 the facts from Government counsel. That's what was
6 done here.

7 The Defendant presumably had an opportunity to
8 put their version of the facts. Clearly we had a jury
9 verdict that basically affirmed in our view or the
10 evidence affirmed virtually all of the facts in the
11 PSR, and it was up to the defense counsel to lay out
12 specific objections as to each paragraph or statement
13 of fact in the PSR.

14 Defense counsel didn't do that. Defense counsel
15 did object to general characterizations, and I think
16 he's got a fair point on that. For example, I think he
17 cites paragraph 13 in which the characterization that
18 he embarked on a decade-long campaign perhaps is more
19 argument than statement of fact. And if the Court
20 wishes to strike that part of the PSR, we would not
21 object.

22 But with respect to the other statements of fact
23 in the PSR, they are, in fact, statements of fact.
24 They are consistent with the evidence at trial, and the
25 case was proven beyond a reasonable doubt.

1 So in light of the fact that the Defendant
2 didn't specifically object to the other statements of
3 fact, we think the Court can make the findings set
4 forth in the PSR short of the characterization that he
5 highlights.

6 THE COURT: Here's what I'm going to do. I am
7 going to sustain the Defendant's objection to the
8 offense conduct. We have tried in this district under
9 Chief Justice Smith to come to some better
10 understanding of how we come to offense conduct
11 paragraphs that are contained in the PSR where we have
12 worked through trying to deal with this very issue
13 where facts may be contested in certain instances and
14 the fact that the PSR lives with the person at least
15 during their custody, if not beyond.

16 And I do find that there are various, let's call
17 them, extra adjectives and adverbs in here that perhaps
18 carry with it matters that shouldn't necessarily go
19 along.

20 So toward that end, I'm going to ask the
21 Probation Department, instruct the Probation Department
22 to redo the offense conduct contained in the PSR such
23 that just the facts of what Mr. Fall was convicted of
24 before this jury are contained in there.

25 I will state for the record and I found that in

1 no way, shape or form is this Court considered or does
2 it consider what is currently contained in the offense
3 conduct as the offense conduct in the PSR and is
4 proceeding with the sentencing pursuant to the fact
5 that I sat through this trial, and I will proceed with
6 it accordingly.

7 So on the issue of the offense conduct, I will
8 sustain the objection. The Probation Department will
9 issue a new offense conduct, he'll send it to both
10 sides, both sides will have time to object to the new
11 offense conduct, and if there's an objection, I'll rule
12 on it. If there isn't, then we'll insert it into a
13 revised PSR.

14 Mr. Fitzgerald, the obstruction of justice
15 objection.

16 MR. FITZGERALD: Your Honor, one of the bases in
17 the PSR for that enhancement was the Government
18 declaring that Mr. Fall committed perjury.

19 THE COURT: Put aside the perjury part because
20 there's a lot in this case, at least on my side, that
21 goes beyond needing to find perjury in order to apply
22 the obstruction of justice.

23 MR. FITZGERALD: Your Honor, beyond the perjury,
24 I think that's up to the Court to decide whether or not
25 that obstruction of justice applies or doesn't apply.

1 So I'd leave that to the Court to decide. As you said,
2 you listened to the trial. That's your decision.

3 THE COURT: Mr. Kane, do you want to be heard
4 any further on it?

5 MR. KANE: No, your Honor, but we do remind the
6 Court that, as set forth in our sentencing brief, other
7 circuits have addressed -- circuits, Tenth Circuit I
8 think, the Ninth Circuit, some District Courts, in
9 which they found the obstruction enhancement does apply
10 based on those two additional grounds beyond perjury.

11 We think perjury is well-supported. We laid it
12 out in our brief; but in addition, the retaliatory
13 lawsuits, the frivolous paper, all that we think
14 supports the obstruction enhancement.

15 THE COURT: I'm going to overrule the
16 Defendant's objection to the obstruction of justice
17 enhancement and apply it in this instance without
18 making any determination on whether perjury occurred or
19 not. There's others that will make that determination.

20 The guideline enhancement is for willfully
21 obstructing or impeding the administration of justice
22 with respect to the investigation, the prosecution or
23 the sentencing.

24 There are two particular categories of cases
25 that the Court finds makes the obstruction of justice

1 enhancement appropriate. One was the filing of false
2 and harassing documents during the course of the
3 judicial proceedings, including allegations and filings
4 that were made that this Court deems to have been
5 fraudulent, as well as charges that were made and
6 asserted against both the prosecutors and court
7 personnel in filings with the court.

8 It's one thing to defend yourself or to assert
9 personal or political beliefs. It's another thing to
10 make false accusations in court filings about personnel
11 and the prosecutors in this case. That's the first
12 reason.

13 The second stems a little from that but involves
14 the filing of two civil lawsuits against some or all of
15 the prosecutors in this case, both in State and Federal
16 Court. The Court specifically finds that those filings
17 were an attempt to obstruct the investigation and the
18 prosecution of this case.

19 There is absolutely no doubt in this Court's
20 mind that Mr. Fall's actions in this matter during the
21 investigation and prosecution represented an attempt by
22 him to obstruct justice such that the enhancement
23 applies.

24 So the Court finds that the guideline range of
25 22 with the criminal history category of I is

1 appropriate carrying with it a recommended period of
2 incarceration of 41 to 51 months, and I'll hear from
3 the Government on its sentencing recommendation.

4 MR. KANE: Thank you, your Honor. Section
5 3553(a), as the Court knows, requires the Court to
6 consider a number of factors before imposing sentence.

7 In addition to the guidelines which themselves
8 account to a large extent for 3553(a) factors, the
9 Court must consider the nature and circumstances of the
10 offense; the history and characteristics of the
11 Defendant; the need for deterrence, which is especially
12 important in tax cases, both specific and general; and
13 the need to avoid unwarranted sentencing disparities,
14 to essentially be fair across the board to similarly
15 situated Defendants.

16 But there's another factor that 3553(a)
17 mentions, a factor that I think ties all the other
18 factors together in this case, a factor that I think
19 would jump out to anybody who came to this case and
20 considered it for the first time afresh, and that is
21 the need to promote respect for the law. I think that
22 consideration ties it all together, your Honor.

23 Indeed, at its core, I think this case really is
24 about the Defendant's willful, arrogant and continuing
25 and unyielding contempt for the rule of law at least

1 with respect to taxes.

2 From his decision to stop paying taxes back in
3 1999 all the way through to the present, including the
4 obstructions of this Court, this case cries out for a
5 sentence that promotes respect of the law and tells
6 this Defendant and others that would engage in the
7 conduct that he engaged in that they're going to pay a
8 heavy price.

9 Indeed, the need to promote respect for the law
10 can be seen first in the nature and circumstances of
11 the offense, including the long chronology over which
12 he committed these offenses.

13 As of April 1999, he decided he wasn't going to
14 pay taxes anymore. That was the deadline for his 1998
15 tax return. He was done paying taxes.

16 As early as 1999, he's using warehouse accounts,
17 he's setting up nominees. Long before the IRS
18 contacted him, long before the IRS audited him, long
19 before the IRS allegedly wronged him in some way, he
20 decided he was done. He stopped filing. He continued
21 to stop filing all the way to the present.

22 Not only did he do that, he engaged in an
23 elaborate scheme to conceal. As we proved at trial and
24 as we argued in our brief, multiple layers of
25 concealment, sophisticated concealment. As we noted in

1 our briefs, virtually every tax fraud tool available he
2 tried to use.

3 Sixteen shell companies to hide his financial
4 affairs; multiple bank accounts, I think 18 bank
5 accounts literally from coast to coast; commingled bank
6 accounts; nominee bank accounts; transferring monies
7 between those accounts; warehouse accounts; multiple
8 warehouse accounts; nine fake names and aliases to lend
9 further concealment; extensive use of cash; the use of
10 nominee business addresses, all of it to ensure what he
11 said in Exhibit 71-F offered at trial, to ensure that
12 he would never pay taxes again.

13 In spite of all these efforts, the IRS caught up
14 with him as early as 2002. Did he get right with the
15 law? Did he comply with the law? Did he respect the
16 law? He did not, your Honor.

17 To the contrary, he tried to obstruct the audit
18 as to his taxes. He filed frivolous paper with the IRS
19 hoping that maybe the agents would go work an easier
20 case because that's what they do, harass and
21 intimidate, filing fictitious financial claims against
22 those agents.

23 And he was warned repeatedly as early as 2002
24 that what he was doing was wrong, that what he was
25 doing could lead to his prosecution, that what he was

1 doing could land him in prison as early as 2002.

2 He didn't heed that advice. He ignored it and
3 pressed full steam ahead; but as bad as that is as to
4 his own taxes, he also encouraged others to break the
5 law starting with his wife.

6 As charged, and as we proved at trial, he
7 encouraged his wife to file false corporate returns.
8 2006 and 2007 were charged. We showed at trial that it
9 actually went back as far as 2003 creating false
10 advertising expenses, false equipment expenses.

11 He caused her to file false personal returns
12 which we showed at trial, at least the 2005 return, in
13 which some of those same false deductions are appearing
14 on her personal returns, which shows you that he was
15 behind it all from the very beginning.

16 She, too, was caught. She was caught in 2008.
17 The IRS audited her. Did he get right with the law?
18 Did he encourage her to comply with the law, to respect
19 the law? To the contrary. He encouraged her to break
20 the law, to not show up at the summons.

21 He told her accountant, Bill Harrigan, if you
22 recall his testimony, that he shouldn't cooperate with
23 the IRS, that he should use his technology papering the
24 IRS hoping that they would go away.

25 He filed frivolous papers with Ken Cournoyer

1 trying to harass and intimidate, again making
2 fictitious financial claims, all in an effort to show
3 disrespect for the law and to obstruct the IRS. They
4 were not good faith inquiries. They were designed to
5 obstruct.

6 But it didn't stop there. 2010 he files false
7 papers with the U.S. District Court for the District of
8 Massachusetts in which he denied any interest in NERH,
9 which the evidence at trial showed he created using his
10 aliases. I think Thomas Brown was the one he used to
11 create that entity. He denied ownership and control of
12 the funds in the U.S. District Court.

13 And it didn't stop there. After Indictment, as
14 the Court has now found, he tried to obstruct the
15 prosecution of this matter through all that he did, all
16 his paper; but he also committed perjury, multiple
17 falsehoods during his testimony, manipulation and
18 deception throughout. Claiming that Managed Skills was
19 real. It wasn't. Claiming he didn't create Managed
20 Skills. The overwhelming evidence showed that he did.
21 Denying any interest in NERH, that he created that.
22 The overwhelming evidence showed that he did. Denied
23 that he knew anything about the cash coming into
24 Comfort Dental. The evidence showed that he did. And
25 we lay out other perjuries in our brief.

1 In addition to the nature and circumstances of
2 the offense, the history and characteristics of the
3 Defendant, as we point out in our brief, again, utter
4 disrespect for the law. Not only did he encourage his
5 wife to violate the tax laws, he encouraged others.

6 Research found on his computer disks shows he
7 was setting up a business to promote tax fraud. It's
8 not clear whether he was successful at it, but we do
9 know at least two witnesses who have come forward whose
10 statements we provided in our brief who outline how
11 Mr. Fall encouraged them to break the law on taxes.

12 And the documents found on his disks show
13 research and him setting up a business to promote tax
14 fraud.

15 The divorce court order, I think that's part of
16 the mix at this point, another area outside of taxes
17 where he showed contempt for the law, contempt for
18 Judge McCann, refused to recognize the Court.

19 There were witness statements we provided in our
20 briefs in which he did the same or similar kinds of
21 things that he's done here, contempt for the law,
22 disrespect for the law.

23 The need for deterrence, it's especially
24 important in tax cases, your Honor, because of the
25 relatively few prosecutions, the nature of our

1 collection system. The Sentencing Commission as an
2 introduction to the guidelines points out how important
3 deterrence is, general deterrence.

4 Honest taxpayers need to know that when people
5 like John Fall do what they do, they're going to pay a
6 heavy price.

7 We would ask the Court to think about the honest
8 taxpayers in this country who just went through another
9 filing season. A lot of them struggle to make ends
10 meet. A lot of them struggle to come up with a check
11 to write to the Treasury, but they do it, they do it,
12 more often than not because of respect for the law and
13 that they know there's probably a heavy price to pay if
14 they're tempted to do otherwise.

15 John Fall over 10 years scoffed at that idea,
16 made a mockery of that. What he did was an affront to
17 those taxpayers. We'd ask the Court to send a message
18 to those honest taxpayers that their honesty does
19 matter.

20 And in this case specific deterrence is also an
21 issue, and that's not always an issue in tax cases,
22 your Honor. In some cases, there's some degree of
23 remorse. In perhaps many cases, the offender never
24 commits the offense again.

25 But this Defendant, although he stands before

1 this Court for the first time for criminal sentencing,
2 he's essentially a recidivist when you take a look at
3 what he did during all those audits given all the
4 warnings that he was given. He just refused to comply
5 with the law. He refused to show respect for the law.

6 Finally, on sentencing disparities, we pointed
7 out in our brief there were some other tax evasion
8 sentencings in this district before Judge Lisi. I
9 think the Bruce Lapierre and the Al Martin case in
10 which they both received 51 months is an appropriate
11 analogy.

12 There really is no individual circumstances here
13 that should mitigate from that sentence. They were
14 unrepentant tax defiers. They, too, I think, cheated
15 on their taxes for more than a decade. So in order to
16 avoid --

17 THE COURT: Mr. Kane, tell me what you know
18 about Eva Melissa Sugar, who is listed in the PSR as a
19 related prosecution who got 18 months. I remember the
20 name during the trial, but I couldn't place what her
21 role was or what her offense was.

22 MR. KANE: I think she pled to conspiracy, if
23 I'm not mistaken, and she was essentially a promoter
24 out in Colorado in which she helped people like John
25 Fall set up shell companies, bank accounts.

1 I don't know what the tax loss was. She pled
2 guilty. She took responsibility for her action. She
3 showed remorse before trial. She didn't perjure
4 herself. She didn't obstruct the Court.

5 So there are a lot of, I think, distinguishing
6 circumstances, although she did I think receive an
7 18-month sentence.

8 So, your Honor, I think taking all of those
9 factors into account, we respectfully suggest that a
10 guideline sentence is appropriate here, and we
11 respectfully recommend that the high end is appropriate
12 given his obstruction of justice here, and we recommend
13 a 51-month term of imprisonment and three years of
14 supervised release.

15 We mention in our brief two special conditions.
16 One condition is typical that we ask for, and that is
17 that he cooperate, when he's released, with the IRS to
18 disclose his financial affairs and pay all back taxes
19 that he may owe, which is going to be less than the
20 \$392,000 tax loss because part of that is Carmen's
21 amount that she paid back.

22 And the second factor is unique to this case,
23 and that is we think there should be an order
24 precluding him from filing the kind of false, frivolous
25 papers that the Court has now found to be obstructive

1 to deter him from further corroding the Court with
2 these kinds of filings, and that should be a special
3 condition. Thank you.

4 THE COURT: Thank you, Mr. Kane.
5 Mr. Fitzgerald.

6 MR. FITZGERALD: Your Honor, I'm going to try to
7 maintain a direct route through my sentencing argument
8 here, but I feel like I might be skipping around a bit.

9 It seems to me after listening to the argument
10 and reading the Government's sentencing memo, the
11 biggest reason the Government wants the 51-month
12 sentence, aside from the guidelines, that's what the
13 guidelines say, is that they think that Mr. Fall is
14 arrogant.

15 Your Honor, I know arrogance. Okay. I know
16 arrogance. Mr. Thompson's here in the courtroom. He
17 understands that I know arrogance because he has to
18 work with me on a daily basis.

19 THE COURT: Should we put him on the stand?

20 MR. FITZGERALD: I think he would confirm what
21 I'm saying, but at least I can admit that I'm arrogant.
22 Okay. The Government's case against Mr. Fall was
23 arrogant. Okay. Their request to you for a sentence
24 is arrogant. And I'm not just picking on --

25 THE COURT: Let's assume it's arrogant. Is it

1 justifiably arrogant, if it even were arrogant?

2 MR. FITZGERALD: No, it's not justifiably
3 arrogant. And, unfortunately, it's Mr. Kane and
4 Mr. Bender here today, but this is not something that's
5 just on them. It's something that appears in
6 Government sentencings and Government cases all the
7 time.

8 Your Honor, if you remember back to the case
9 against Mr. Fall, we heard about millions and millions
10 of dollars going through all these different bank
11 accounts, all of these warehouse accounts, all right,
12 Agent Pleshaw, his slides about all these millions of
13 dollars.

14 And in the PSR we have these related cases,
15 right, which I found curious that they're included in
16 the PSR. I didn't object to it. It's the first time
17 I've seen cases attached to a PSR who were not
18 Co-Defendants and were from other jurisdictions. I
19 don't know.

20 The relation is not that they conspired with
21 Mr. Fall, even though you'll see they were all
22 convicted of conspiracies. The relationship was that
23 Mr. Fall's money, according to the Government, went
24 through those people; but it's added in there to make
25 Mr. Fall look like a bigger criminal than he actually

1 is.

2 The millions of dollars that flow through these
3 warehouse accounts was not money that he was in control
4 of. They come here today and they say the loss amount
5 is 390 something thousand dollars, that's all, but
6 we've put forth this arrogant argument that Mr. Fall is
7 a far bigger criminal than he is and that he's arrogant
8 and, therefore, give him a top-of-the-guideline
9 sentence. Okay.

10 The sentencing guidelines, Judge -- perhaps this
11 is where I'm going to be arrogant now. The sentencing
12 guidelines are simply not credible. They lack
13 credibility. The Government quoted the introduction to
14 the tax guideline, okay, in their sentencing memo, and
15 on page -- I'm sorry. I do have the actual page
16 number.

17 They quoted the introduction to the tax
18 guideline, and I'll just read the portion that I think
19 makes most -- is most important for this.

20 In the middle of that paragraph it says -- these
21 are the introductory comments to, excuse me, Part T of
22 the offense conduct in the sentencing guidelines. In
23 the middle of that commentary paragraph it says,
24 "Because of the limited number of criminal tax
25 prosecutions relative to the estimated incidence of

1 such violations, deterring others from violating the
2 tax laws is a primary consideration underlying these
3 guidelines." Okay.

4 So what that tells me is that the Sentencing
5 Commission thought that deterrence, deterrence was the
6 main force in coming up with these sentencing
7 guidelines.

8 Right underneath it says this was written in
9 1987, so almost 30 years ago, and we're still fighting
10 the same battle.

11 So one of the things that Congress told the
12 Commission to do was to write guidelines and watch the
13 guidelines and study the impact of the guidelines to
14 determine if they have the effect they're intended to
15 have, and clearly they're not because we still have the
16 same types of cases.

17 Okay. Mr. Kane will tell you, this is the same
18 type of case. We want to send out a message to these
19 people. Okay. Well, the sentencing guidelines that
20 the Government has latched themselves onto is not
21 sending that message.

22 Now, the tax table that's attached to or
23 referred to under the tax guidelines has changed since
24 1987. And in 1987, Mr. Fall would have been looking at
25 a guideline range four levels lower than he is now. So

1 are we to believe that the answer to deterrence is more
2 jail? I don't think so because we still have these
3 cases coming.

4 And, actually, if you adjust for inflation and
5 economics, maybe there's really no difference. Maybe
6 he's actually looking at a lower sentence now than he
7 would have been then or vice versa. I'm not sure.

8 But the guidelines themselves simply lack
9 credibility. That number, 41 to 51, that the Court's
10 decided on for the guideline range is pulled out of
11 thin air. It's just pulled out of thin air.

12 Prior to the sentencing guidelines, 38 percent
13 of all cases in Federal Court, all people, Defendants
14 sentenced in Federal Court got probation. Thirty-eight
15 percent. Since the guidelines as we know, even
16 post-*Booker*, you know, your Honor, far less than 38
17 percent.

18 But one of the other things that Congress told
19 the Commission to do was to account for first-time
20 offenders, nonviolent crimes and -- I'm sorry, in
21 18 U.S.C. 994 Congress directed the Commission to
22 reflect the general appropriateness of imposing a
23 sentence other than imprisonment in cases in which the
24 Defendant is a first-time offender who has not been
25 convicted of a crime of violence or otherwise serious

1 offense.

2 Now, we can have a debate about whether this is
3 a serious offense or not, but it's certainly not a
4 crime of violence. Mr. Fall's not a danger to the
5 community.

6 And I would say it's not a serious offense
7 looking at the penalties that can be applied here. The
8 maximum penalty is five years in prison. Simple
9 possession of a firearm carries up to 10 years.
10 Possession of small amounts of cocaine and crack
11 cocaine carry up to 20 years. Bank fraud carries up to
12 30 years.

13 So there's a -- I would say looking at
14 everything, this is not the serious offense, okay, that
15 the Government thinks it is. And Mr. Fall is the
16 person that the Congress -- is the type of person that
17 Congress was talking about when telling the Commission
18 to account for, in the guidelines, the appropriateness
19 of probation for a first-time offender.

20 And, your Honor, although the Government has
21 latched onto the guidelines and asked to be given the
22 top end of the guideline and mostly because they want
23 to promote respect for the law and a deterrent effect
24 and all, they really haven't demonstrated that that
25 sentence will have any deterrent effect. They haven't

1 shown you that the sentencing guidelines have ever had
2 any deterrent effect in this matter.

3 Okay. The Government is obviously concerned or
4 upset about Mr. Fall's campaign over time against the
5 IRS. And you remember, Judge, though, he was actually
6 convicted of obstructing. That was one of the charges.
7 Okay. So the acts that were obstructing is one of the
8 things he's been convicted of.

9 THE COURT: I looked at that because that's what
10 I initially thought. And then I read the guideline,
11 the sentencing manual, and it says that you don't
12 apply -- I wondered whether an obstruction charge like
13 this would negate the addition of the obstruction
14 enhancement, but this isn't one of the provisions that
15 the guideline provides for on obstruction pretty
16 explicitly.

17 I was surprised by that, but that's -- you know,
18 if we're applying the guidelines, that's sort of how it
19 came down.

20 MR. FITZGERALD: And they only have the
21 credibility that they have, which is, as I said, none.

22 THE COURT: Don't throw it.

23 MR. FITZGERALD: I'm not going to throw it. I'm
24 not going to throw it.

25 But the fact is that some of the obstruction

1 they're complaining about now and saying it's an
2 aggravating factor is, in fact, the crime he was
3 convicted of. Some of it, not all of it, but some of
4 it. So it's not really an aggravating situation. It
5 is the situation.

6 If you remember, your Honor, and I think you
7 listened, but if you remember -- I know you listened.
8 I'm sorry. Mr. Fall was upset with the IRS because
9 they disallowed an \$89,000 deduction. Okay.

10 I've never had a deduction that large. I would
11 be upset, too, if it was disallowed. And he asked for
12 some answers from the IRS, which I think anybody
13 should. They didn't give him a direct response. They
14 gave him a canned response over and over, these form
15 letters over and over. And their excuse is, Well,
16 we're trying to deal with millions and millions of
17 people.

18 Well, we're still individuals, and he certainly
19 expected an answer particular to his question. They
20 never gave him that. Okay. So he's upset about that.
21 He's got a right to be upset about that.

22 THE COURT: My silence, by the way, isn't
23 accepting everything you said but rather than -- the
24 record is clear that he didn't have a right to be upset
25 by that and to react the way he did, but I'll get to

1 that shortly.

2 MR. FITZGERALD: I don't know whether he has a
3 right to or not, your Honor; but if you're asking for a
4 response, you're asking for an explanation that I think
5 you're entitled to, I think he has --

6 THE COURT: If it's based in reality and not
7 based on fraud.

8 MR. FITZGERALD: Well, there's a difference --
9 what Mr. Fall believes is different from what the
10 Government believes. Okay.

11 And I'd point out, you know, another part of
12 this is the -- when the Government actually -- when the
13 IRS actually got to the point of wanting to sit down
14 with Mr. Fall in an audit or in person and act
15 personally with him, it wasn't about whether or not he
16 would pay. It was about how much and when. Okay.

17 So you never get to have that meeting with the
18 IRS about whether or not the deduction is appropriate.
19 It's we've already decided, you need to pay and when
20 are you going to pay us. Okay.

21 So you can say that Mr. Fall doesn't have a
22 right to be upset, but he was upset. Okay. He
23 actually was upset. And to say that he can't be upset
24 and the Government saying he can't be upset, I think
25 that's arrogance.

1 The Government says that one of the things he
2 testified to, being targeted by the IRS, is false, just
3 plain false. Well, I think that that response is just
4 plain false because you remember, your Honor, the very
5 first witness we had from the frivolous tax unit, okay,
6 they have a list. They have people that they label and
7 stick in the frivolous tax unit, and Mr. Fall was one.

8 Whether you call it targeting or labeling or
9 identifying, I don't care. He was targeted. He was
10 labeled. The IRS had him on the radar. Okay.

11 He felt he was targeted. So him saying that he
12 was targeted is not a falsehood. That's not perjury.
13 It's his perception of what's going on and somewhat
14 founded.

15 In the memo, during the trial, in the argument,
16 you know, the continued tax dodger, tax defier,
17 sovereign citizen, all these things, labeling,
18 labeling, labeling; and then they're going to say he
19 actually wasn't targeted at all.

20 I'm not saying he didn't have a chance to maybe
21 change some things, but he has been targeted and he has
22 been labeled and he has been treated a particular way.

23 Your Honor, the perjury accusations, okay, and
24 this again is not just something that Mr. Kane and
25 Mr. Bender I think suffer from with the Government, but

1 perjury is not when the Government doesn't believe you.
2 That's not perjury. Just because the Government
3 doesn't believe what you say is not perjury.

4 Perjury by the statute, okay, 18 U.S.C. 1621, is
5 when the witness says something under oath, okay,
6 knowing or believing that it's not true. He says it as
7 true, but he believes in his mind it's not true when he
8 says it on the stand. That's perjury, and that's
9 different than not believing or disbelief by the
10 Government.

11 Most of what they've argued as perjury is just
12 disagreement or disbelief on the Government's part.
13 They said in the sentencing memo that Mr. Fall
14 committed a felony by committing perjury on the stand
15 during his stunted testimony.

16 I think that was somewhat ironic, your Honor, I
17 think I'm using that correctly, because one of the
18 things that Mr. Fall had said that the Government's
19 complaining about is he said that an IRS officer had
20 done something wrong and what the IRS officer had done
21 was a felony. His belief, okay, is not perjury.

22 I'll give you a better example of what could be
23 perjury, though, or closer to what perjury is, and that
24 is what Carmen Sanchez did in this courtroom. All
25 right.

1 If you remember, your Honor, Friday afternoon
2 the first week of the trial Ms. Sanchez was
3 testifying --

4 THE COURT: Dr. Sanchez.

5 MR. FITZGERALD: Dr. Sanchez. Excuse me.
6 Dr. Sanchez was testifying, and I kept asking her about
7 those checks that she signed and whether or not she
8 knew that they were going to false expenses. I think
9 if we actually pull up the transcript, you'll see she
10 never actually answered that question.

11 On Friday afternoon she got really tearful about
12 it. She kept saying over and over that, Well, you
13 know, I trusted my husband, I trusted my husband, he's
14 my husband so I should trust him.

15 On Monday morning I asked her the same series of
16 questions. Same answers. She wasn't crying or
17 starting to cry on Monday morning. Same answers.

18 Well, your Honor, when Dr. Sanchez testified at
19 the grand jury, the same questions were put to her by
20 the Government, and she did the same thing. She didn't
21 say, Yes, I knew they were false checks, or, No, I
22 didn't know they were false checks. She went on this
23 rambling thing about I trusted my husband.

24 Now, Dr. Sanchez is not, regardless of how she
25 testified, she's not meek, she's not stupid, she knows

1 exactly what she was testifying or signing. That is a
2 closer example in my mind to perjury than what Mr. Fall
3 did.

4 And, you know, if it was just her answering me,
5 it would be one thing --

6 THE COURT: Whether one or two people committed
7 perjury, Mr. Fitzgerald, in the courtroom isn't for me
8 to determine at this point. As I told you before, I'm
9 not making a determination on perjury.

10 Clearly, I'm not making a determination on
11 whether or not Dr. Sanchez committed perjury, but I
12 told you earlier in the discussion that I will leave
13 that to others or not to make that determination,
14 but --

15 MR. FITZGERALD: That's fine, your Honor.

16 THE COURT: That's a legal finding after due
17 process and a trial, a determination of whether someone
18 committed perjury or not. I don't have that here. I'm
19 not considering perjury as part of any analysis in the
20 sentencing.

21 MR. FITZGERALD: That's fine. That's their
22 argument that he should get part of the sentence
23 because of committing perjury.

24 Your Honor, the Government talking about guiding
25 other people into violating the law, dragging other

1 people along to commit these tax crimes. The first is
2 the allegations about him bringing his wife into this,
3 bringing Dr. Sanchez into this, convincing her to break
4 the law. Okay. He's been convicted of that, so that's
5 not an aggravating factor. That is the case. That's
6 the first part.

7 The second thing is that the Government included
8 in their sentencing memo as exhibits statements from
9 two people, a Mr. Pappagano or Papagno (phonetic) and a
10 Ms. Allen; and I'd suggest that each one of those
11 statements about Mr. Fall trying to get them to do
12 things is really not credible, shouldn't be taken with
13 any kind of credibility, and here's why.

14 Mr. Papagno, as far as I could tell in the
15 limited time that I had to research him, seems to be in
16 the crosshairs of the IRS already, okay, and for as far
17 as I could tell for his own doing, not necessarily
18 Mr. Fall telling him to do something; but in any event,
19 his statements are certainly clouded or muddled up by
20 his own legal problems.

21 Ms. Allen, on the other hand, is in between
22 pleading guilty and her sentencing right now, and I
23 think the date on her statement was last week, okay;
24 and her plea agreement is that she pleads guilty to one
25 count, and I can't remember if it was just filing a

1 false tax return or aiding and abetting or something,
2 they would dismiss the other four or five counts of
3 false statements. That's part of her plea agreement.

4 The other part of her plea agreement is that she
5 cooperate with the Government against any and all that
6 she can provide information about.

7 Now, she pled guilty prior to Mr. Fall's trial,
8 so presumably the Government already knew that
9 Ms. Allen -- the allegations that Ms. Allen was making
10 against Mr. Fall back then, but we're just hearing
11 about it a week -- within the last week.

12 Clearly Ms. Allen's statements about Mr. Fall
13 getting her to commit illegal acts are biased based on
14 her own criminal liability, and she's in jeopardy.
15 She's facing sentencing here shortly.

16 All right. Your Honor, I apologized I was going
17 to be rambling around a bit at the beginning. I just
18 want to end with this. When we talk about the purposes
19 of sentencing under 3553(a), one of them is not
20 uniformity in sentencing. Uniformity comes from the
21 Sentencing Reform Act that created the guidelines.

22 The guidelines are about uniformity. The
23 guidelines categorize everybody by criminal history and
24 crime, the new crime. That's it. Those two factors.
25 That's how they create uniformity.

1 Sentencing and 3553(a) is about sentencing the
2 single individual here, Mr. Fall. Whether his sentence
3 is uniform with other people or not is not 3553(a)'s
4 aim. He's sentenced as an individual.

5 Deterrence and respect for the law, that's what
6 the Government is hanging their hat on for the 51-month
7 recommendation here. Okay. That number is based on
8 the guidelines. All right.

9 There's nothing to say that 51 months or 41
10 months or anywhere in between under the guidelines is
11 going to be a better deterrent than a sentence that's
12 shorter.

13 There's nothing to say it's going to promote
14 more respect for the law, 41 to 51 months or a sentence
15 that's shorter. As I said before, he's not a danger to
16 the community.

17 The Government's asked for a supervised release
18 condition that he cooperate with the IRS and eventually
19 pay back taxes and satisfy fines and everything. Well,
20 he certainly can't do that if he's locked up, if he's
21 not going to have any money to do that. So that is a
22 purpose of sentencing; that if we want him to pay back
23 this money, he needs to be out, not in, jail.

24 Your Honor, and common sense should say, I think
25 it is, that the only reason for prison for Mr. Fall is

1 simply to punish him because it's not going to, in
2 fact, create any deterrence. It's not going to change
3 Mr. Fall's attitude towards law, or I shouldn't say
4 attitude, his understanding of what the law is and what
5 the authority is.

6 Your Honor, I'm asking for probation because
7 he's a first-time offender and he's not convicted of a
8 serious crime, of a violent crime, he's not a danger to
9 the community, and the Government ultimately wants to
10 be repaid and made whole.

11 There is one last thing, your Honor. The second
12 supervised release condition the Government asks for,
13 I'm going to object to that because effectively
14 Mr. Fall could file something and after he's done that,
15 according to the way that the condition's written, he
16 could be told that it's frivolous.

17 So that's not the way the conditions are
18 supposed to work. You're supposed to know exactly what
19 it is that's wrong before you do it.

20 So I understand what the Government's trying to
21 do there; but that condition is, I guess I would say,
22 unconstitutional because he's going to be punished for
23 something after he does it. He's not being told what's
24 not allowed ahead of time, your Honor. So thank you.

25 MR. KANE: May I on one issue?

1 THE COURT: I'm all set, Mr. Kane. Thank you.
2 Mr. Fall, do you wish to address the Court
3 before I impose sentence?

4 THE DEFENDANT: Sir, as I've stated --

5 THE COURT: Mr. Fall, simple question. Do you
6 wish to address the Court before I impose sentence?

7 THE DEFENDANT: I wish to make my allocution.

8 THE COURT: And you have a right to do it, and
9 I'm going to afford you that right; but you need to be
10 by a microphone because the recordings don't pick it up
11 and the stenographer can't take it down.

12 THE DEFENDANT: Okay.

13 THE COURT: You have a right to allocute. I'm
14 going to afford you that right to allocute, but you
15 need to be by the microphone.

16 THE DEFENDANT: Okay. I'm just going to keep
17 this short.

18 THE COURT: No, but you still need to be by the
19 microphone.

20 THE DEFENDANT: That's okay. I understand.

21 Unless that accuser shows up, the Plaintiff
22 shows up and testifies, this case is fraud. It's void.
23 I've given you notice that I've tendered a certified
24 copy of the live birth certificate, promissory note,
25 the jury verdict form, which is not signed, does not

1 bear the Court seal, all accepted with value, all of my
2 original signature. And also I want to remind you --

3 THE COURT: Mr. Fall, do you wish --

4 THE DEFENDANT: Sir, I want to remind you that
5 if the U.S. Marshals touch me and there's no sworn
6 accusation on the record, as you know there isn't, only
7 I have an accusation on the record sworn, no verifiable
8 claim on the record, you know all this, sir --

9 MR. FITZGERALD: John, it needs to be recorded.

10 THE DEFENDANT: It can hear me fine. I have a
11 very good voice.

12 THE COURT: Mr. Fall, do you wish to allocute --

13 THE DEFENDANT: Then that is fraud, sir, and
14 it's a felonious act, and I'm sure you don't want a
15 felonious act happening by way of your case.

16 THE COURT: Vickie, give Mr. Fall a microphone,
17 please.

18 THE DEFENDANT: It doesn't matter to me if it's
19 in the transcript. I have witnesses here.

20 THE COURT: The deputy clerk is going to hand
21 Mr. Fall a microphone so he can be afforded his
22 opportunity to allocute.

23 THE DEFENDANT: I feel important now. So let's
24 start with the basics, and I'm going to put all of this
25 under affirmation so the stenographer has this.

1 Everything I say from now on is under affirmation.

2 I have done no wrong. There's been no act of
3 Congress before this Court. That's absolutely insane.
4 What law are they talking about?

5 There is no act of law. There is no act of
6 Congress before this case. There's no accuser. I am
7 neither the accused nor the Defendant. I have no
8 attorney. I've had no representation in this case
9 because the nature of the charges have been concealed
10 at all times. It's absolutely impossible to obtain
11 counsel unless the nature of the charges are made
12 known.

13 It's very simple. So if the accuser doesn't get
14 on that witness stand right now and the Plaintiff with
15 face, then this case is fraud and it's void.

16 The record shows proof that I am a man, John
17 Joseph Fall, and I'm a private citizen, not a public
18 citizen. And I'm without titles nor surety, and I am
19 the sole grantor and beneficiary in the private trust
20 John J. Fall, and I'm not the trustee. I believe
21 Mr. McKane (sic) is the trustee.

22 This case damages that interest and my property,
23 yet there is no act of Congress before the Court as I
24 have said. And I'm not represented by an attorney.
25 I've never been represented by an attorney.

1 The Defendant is a fiction. And since there is
2 no sworn accusation on the record against either me or
3 said trust and no lawful jury verdict, as the jury
4 verdict form clearly shows, I wish and require you to
5 confirm to all the U.S. Marshals here that I have filed
6 a claim for \$1 million if they touch me or trespass
7 against me in any way.

8 I verify that all the documents I placed on the
9 record are the truth, and they're unrebutted. I am the
10 only one with a sworn accusation on the record. There
11 is no other accusation.

12 I've placed on the record proof that John J.
13 Fall is a trust, a private trust. I've also placed on
14 the record proof that, none of which has been disputed,
15 that I am a man and a private citizen. I'm not a U.S.
16 citizen. I'm not a surety to the public.

17 Sir, I require you to take notice that I have
18 presented the prosecutors this morning with certified
19 copies of both the jury verdict form and the
20 certificate of live birth, both accepted for value in
21 exclusive equity with my original signatures, plus
22 seven certified money notes with my original
23 signatures, all presented with intent to discharge and
24 abate the matter without admitting to any wrongdoing.
25 I simply want my property free.

1 I declare this matter as now discharged and
2 abated without further effect.

3 THE COURT: Thank you, Mr. Fall.

4 Mr. Fall, I have one question for you that I
5 didn't ask earlier. Did you --

6 THE DEFENDANT: Sir, is there an order that
7 requires the man, John Joseph Fall, the private
8 citizen, to be here?

9 THE COURT: Yes.

10 THE DEFENDANT: May I see that order bearing a
11 clerk's seal and the clerk's signature because you're
12 putting these men in harm's way if you don't show that
13 order.

14 THE COURT: Mr. Fall, I'm issuing an order
15 consistent with the Court's prior order that you attend
16 all hearings of this Court. This is a sentencing
17 procedure. You're required to be here.

18 THE DEFENDANT: Then I require you to show the
19 marshals that order.

20 THE COURT: If you attempt to leave the
21 courtroom at this time, I'm instructing and ordering
22 the marshals to take you into custody.

23 THE DEFENDANT: I require you to show that
24 order, sir, that specifically names the man, John
25 Joseph Fall, six foot one, blue eyes, not the fiction

1 John J. Fall.

2 THE COURT: Mr. Fall, have you had a chance to
3 review the presentence report? I didn't ask you that
4 earlier. Did you get a copy of the presentence report?

5 THE DEFENDANT: Sir, you well know by my sworn
6 testimony on the record I cannot read, I do not
7 comprehend legalese.

8 THE COURT: So you're not answering the
9 question as to whether you received it?

10 THE DEFENDANT: There's sworn testimony on the
11 record that's not been rebutted.

12 THE COURT: This Court has reviewed the many
13 filings that have taken place in this case. The Court
14 has considered the facts that came out at trial during
15 this case having sat through it. The Court has
16 considered the filings during sentencing of the
17 Government and the arguments of both counsel for the
18 Government and for Mr. Fall as well as the allocution
19 made by Mr. Fall this morning.

20 And I find that the nature and circumstances of
21 the offense are such that Mr. Fall not just failed to
22 pay taxes for over a decade but took affirmative and
23 evasive tactics to avoid tax liability.

24 It involved an intricate and a sophisticated
25 system of fraud spanning this country and spanning

1 almost over a decade, and it involved many others.

2 You used dummy corporations and companies,
3 fraudulent accounts, fake names to accomplish the goal
4 of obstructing in this case.

5 THE DEFENDANT: Sir, where is the sworn
6 testimony that says that?

7 THE COURT: These actions by you show your
8 history and characteristics of intricate deception and
9 a long history of illegal behavior.

10 In order to reflect the seriousness of the
11 offense and promote respect for the law and consistent
12 with the 3553 factors that this Court has and does
13 consider and to punish you for your conduct, a serious
14 jail sentence is required.

15 The guideline recommendation --

16 THE DEFENDANT: I'm not accepting any jail
17 sentence, nor fines, nor taxes.

18 THE COURT: The guideline range of 41 to -- the
19 guideline range is 41 to 51 months; but this Court
20 believes that a 30-month sentence, two-and-a-half
21 years, is sufficient but not greater than necessary to
22 comply with all of the purposes of sentencing.

23 And, therefore, Mr. Fall, I sentence you to a
24 period of incarceration of 30 months in the custody of
25 the Bureau of Prisons.

1 In addition to the 30 months, the Court imposes
2 as to Counts I, III and IV a period of one year of
3 supervised release; as to Count II, a period of three
4 years of supervised release, all to run concurrently.

5 You shall cooperate -- as a special condition,
6 in addition to the standard conditions of supervised
7 release, you shall cooperate with the Internal Revenue
8 Service and file all outstanding tax returns and pay
9 all outstanding taxes, interest and penalties.

10 The Court finds that a fine is not appropriate
11 but the Court imposes the \$400 mandatory special
12 assessment.

13 Anything further from Probation?

14 THE PROBATION OFFICER: Nothing further, your
15 Honor.

16 THE COURT: Mr. Fall, the Court hereby notifies
17 you that you have a right to appeal this sentence.

18 THE DEFENDANT: Sir, I'm not the person,
19 Mr. Fall. Please stop referring to me that way.

20 THE COURT: If you can't afford the cost of an
21 appeal --

22 THE DEFENDANT: I'm John Joseph Fall. I have
23 sworn testimony on the record what my name is.

24 THE COURT: If you can't afford the cost of an
25 appeal, you may move to proceed in forma pauperis. If

1 you can't afford counsel for an appeal, one will be
2 appointed for you. You are also notified that the
3 Clerk of Court will file an appeal on your behalf if
4 requested to do so by you.

5 THE DEFENDANT: No one has permission to file
6 anything on my behalf.

7 THE COURT: Any appeal from the sentence must be
8 filed within 14 days of entry of the judgment on the
9 docket. Mr. Fall, do you understand these appellate
10 rights?

11 THE DEFENDANT: You have my testimony on the
12 record, sworn and un rebutted.

13 THE COURT: Mr. Kane, anything --

14 THE DEFENDANT: There's nothing to understand.
15 I'm the only one with sworn accusations on the record.
16 This case is entirely fraud.

17 THE COURT: Mr. Kane, anything further for the
18 Government?

19 MR. KANE: Two things, your Honor. The
20 Government moves to revoke bail. We don't think this
21 is an appropriate case for voluntary surrender given
22 the living circumstances, the inconsistent living
23 circumstances, the fact that he doesn't have a job, his
24 use of aliases, the nature of the conduct that he
25 committed for which he was convicted, his conduct here

1 today once again showing disrespect for the Court.

2 THE DEFENDANT: I mean no disrespect, sir.

3 MR. KANE: His talking over the Court when the
4 Court is trying to issue its orders. For multiple
5 reasons, he's not an appropriate case for voluntary
6 surrender. So that's point number one.

7 Point number two, I'd note that the Court did
8 not impose the special conditions that we requested as
9 to frivolous filings, and I think I can understand
10 where the Court might be coming from there; but we
11 would ask the Court perhaps to issue an order that
12 would have a magistrate judge review all future filings
13 from this Defendant and make a determination whether
14 they were or are false and frivolous and not enter them
15 into Pacer and become public records.

16 I think this may have been done in another case
17 by Judge Lisi. We can look into that and submit
18 something to the Court.

19 THE COURT: Mr. Kane, I'm not going to impose
20 that condition. I think the system works itself out
21 even with potentially frivolous filings. If there's
22 material that you believe once it's filed it should be
23 stricken, then an appropriate motion, or anyone, an
24 appropriate motion should be made.

25 I can understand your frustration, but I think

1 we need to let the system play out in that regard.

2 Mr. Fitzgerald, any position on revocation of
3 bail?

4 MR. FITZGERALD: Yes, your Honor. Despite all
5 of the arguments about him being disrespectful of the
6 Court and talking over the Court and everything else in
7 court, he has always showed up for court on time, where
8 he's supposed to be, when he's supposed to be there and
9 can be certainly depended on to do that and report to
10 Bureau of Prisons when the Court orders him to do that.

11 THE COURT: Mr. Fitzgerald, I agree with you
12 that that has been the case. That's why I granted him
13 bail at your request a couple of weeks ago. However,
14 this is a different situation.

15 I'm going to remand immediately the Defendant
16 into the custody of the U.S. Marshals. My concern is
17 his continued failure this morning as well knowing this
18 was pressing to even acknowledge who he is, and I fear
19 his -- if he carries that issue forward that he
20 wouldn't otherwise report in light of the sentence that
21 was imposed. So I'm going to remand him to the custody
22 of the U.S. Marshals.

23 THE DEFENDANT: They better make sure that
24 there's a Court order, sir, signed with a court seal on
25 it.

1 THE COURT: We'll stand adjourned.
2 (Adjourned.)

3 * * * * *

4
5 C E R T I F I C A T I O N
6
7

8 I, Karen M. Wischnowsky, RPR-RMR-CRR, do
9 hereby certify that the foregoing pages are a true and
10 accurate transcription of my stenographic notes in the
11 above-entitled case.

12
13 February 16, 2016

14 Date

15
16
17 /s/ Karen M. Wischnowsky

18 Karen M. Wischnowsky, RPR-RMR-CRR
19 Federal Official Court Reporter
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